No. 373.
Petition for Rehearing.
MAY 13 1901

Filed May 13, 1901.

IN THE SUPREME COURT OF THE UNITED STATES.

Supreme Court of the United States.

373.

DANVILLE WATER COMPANY, . . . *Plaintiff in Error*,

vs.

CITY OF DANVILLE, ... *Defendant in Error*

PETITION FOR REHEARING.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Danville Water Company, plaintiff in error in a certain cause, No. 373 on the docket of the present term of this Court, decided March 25, 1901, would respectfully ask a rehearing therein.

1. The principal matter in controversy is the statutory authority of the City of Danville to make the contract sued on. The existence of this statutory authority depends upon the true construction of the Act of April 9, 1872:

> "The City Council . . . shall have power to provide for the supply of water . . . by the construction of water works, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding thirty years."

Such is the language of the Act. It is construed to mean the same as it would mean if it read:

> "And to authorize any person or private corporation to construct and maintain the same at such rates as may *from time to time* be fixed by ordinance, and for a period not exceeding thirty years."

2. It is argued in favor of this construction that the Legislature could reasonably vest in the City Council the right to regulate the rates of water from time to time.

In delivering judgment in the case of Trustees of Clyde Navigation vs. Laird, L. R., 8 App. Cases 668, Lord Blackburn said:

> "But though I think the reasonablensss of a scheme is a very good reason for thinking that the legislature might have wished to adopt it, and therefore for construing the words used as showing an intention to carry it out, if the words used will bear such a sense, it affords no justification for introducing new words or construing the words used in a sense which they cannot bear."

3. All rules of construction are meant to subserve a single purpose; which is to give effect to the meaning of what is the object of construction. This meaning is often well ascertained by considering what has been the

conduct of those whose acts were induced by their belief as to this meaning.

In the twenty years from 1872 to 1891 water works were built by private individuals or private corporations in very many towns and cities of Illinois. Since 1891 we believe all water works have been built by the public authorities. The reason for this change is easily found.

Up to 1891 it was not doubted that cities and towns had the right to contract with private individuals and private corporations for a supply of water at definite rates, and for a definite period, and thus assure to the investor a return for the outlay. Since 1891 it has been known that under the authority given by the Legislature the City Council could at any time change the rates. The fact that private individuals and private corporations did enter into contracts with city councils under the Act of 1872, and erect water works under such contracts, and the fact that such city councils did contract for a supply of water at fixed rates and for definite terms, is strong if not conclusive evidence that both parties to these contracts believed the law justified their entering into them. The private individual or the private corporation did not mean to put at hazard capital and labor without some fixed return being assured. Certainly the private individual or private corporation believed the city council was bound by its contract.

It must be assumed that the City Council entered into the contract in good faith and believed that it had the right to do so. Certainly the City Council did not have an undisclosed purpose of claiming lack of authority.

Again, not until 1891 did the Legislature pass an Act in terms granting the power to regulate the rates. If the Legislature believed that the power to regulate rates inhered in the Act of 1872, could be read into it by the interpellation of the words "from time to time," although no such words are there, then there was no occasion for the Act of 1891 at all.

This process of inquiring what the private individual or private corporation, the city council, the Legislature, supposed was the meaning of the Act of 1872; this examining into the conduct of the parties is simply an effort to arrive at the true construction by showing the practical construction of the statute.

4. This Court has many times given great weight to this practical construction:

> "It is a settled doctrine of this Court that in case of ambiguity the judicial department will lean in favor of a construction given to a statute by the department charged with the execution of such statute, and if such construction be acted upon a number of years, will look with disfavor upon any sudden change whereby parties who have contracted with

the government upon the faith of such construction may be prejudiced." (Mr. Justice Brown in United States vs. Alabama R. R. Co., 142 U. S. 621.)

5. In construing the meaning of this Act of 1872 we should not regard it as if it were the language of the charter of a private corporation. Such a charter, as is well known, is usually drawn by the counsel for the company, and sometimes contains language susceptible of great scope.

This Act of 1872, however, applied to all city councils, and its interpretation became the duty of many lawyers. The fact that all concurred in giving the same meaning to it is certainly most persuasive that this was its true meaning. And there is the less room for endeavoring to narrow its meaning by the interpellation of words which are not contained in it.

This is more obvious when the interpellation of these words gives the statute a meaning which is contrary not only to its letter but to its spirit. We respectfully submit that any lawyer whose duty it was to consider the power of a city council, under the Act of 1872, to contract for a supply of water at a fixed rate for a period not exceeding thirty years, would say that language could hardly be chosen that would be more apt in giving the power of contract to the city council. And the same is true in regard to those called upon to advise

whether the securities of corporations, dependent for their value upon the integrity of the contracts, had a stable basis.

> "When the good faith of all the parties is unquestionable the courts will lean to that construction of the statute which will uphold the transaction as consummated." (Provident Trust Co. vs. Mercer Co., 170 U. S. 600.)

6. If it be assumed that the City of Danville had the right to enter into the contract sued on with the Danville Water Company, binding itself to take the supply of water at the price therein fixed for the time therein designated, it would hardly seem possible that the Legislature could thereafter, under a power to prescribe, in the government of corporations, "such regulations and provisions" as it may deem advisable, vest in the City of Danville the right to change this contract.

A corporation may, if the Legislature has reserved authority over it, be deprived of the power to make new contracts. But thus far we know of no case which has held that after a corporation has, under authority of law, made a contract, the Legislature can abrogate this contract. In other words, if the Danville Water Company had made a contract with a private individual to furnish him a certain quantity of water at a certain price for a certain time, the power of the Legislature, reserved

in the terms given above, would not enable it to interfere with this contract.

A bank which is chartered by the Legislature might be prohibited from lending a greater than a prescribed amount of money to a single customer, but the Legislature could not interfere with a transaction of lending which had already taken place. In other words, the power which is reserved to the Legislature of regulation has never extended to the avoiding of contracts already made by the corporation.

In the case at bar, if we are right in supposing that the City of Danville and the Danville Water Company had authority to enter into the contract sued on, the right of the Legislature to prescribe "such regulations and provisions" as it may deem advisable, could not be held to give to it the authority to confer power upon the City of Danville to abrogate this contract.

Contracts made subsequent to the passage of the Act of 1891 would of course stand on a different footing, but those made prior thereto, it would seem to us, must remain in their integrity.

In the various cases which have been brought to this Court, involving the power of the Legislature to regulate the compensation to be paid to public companies for service, no one has yet justified the imposition of a new rate in place of an existing contractual rate. No

case, in other words, has gone so far as to hold that the Legislature, notwithstanding the public company has entered into a contract for a given service, during a given time and for a given consideration, can alter either the time for which the contract is to run or the amount of service or the amount of compensation. Your petitioner would respectfully submit that it is entitled to have its contract carried out according to the belief of both parties when it was entered into.

Your petitioner prays for permission to be heard in a re-argument of this cause, and as in duty bound will ever pray.

WILLIAM W. DAVIES,
ALEX. POPE HUMPHREY,
Counsel for Petitioner.

We certify that in our opinion the foregoing petition for rehearing is well founded.

WILLIAM W. DAVIES,
ALEX. POPE HUMPHREY,
Counsel.